

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ORDER

Pending before the Court is the Motion for Preliminary Injunction, (ECF No. 4), filed by Plaintiff William Sabatini (“Plaintiff”). Defendant Nevada State Board of Nursing (“Defendant”) filed a Response, (ECF No. 31), to which Plaintiff filed a Reply, (ECF No. 34).

Also pending before the Court is Plaintiff's Motion to Seal, (ECF No. 2). Defendant did not file a Response.¹

For the reasons set forth below, Plaintiff's Motion for Preliminary Injunction is **DENIED** and Plaintiff's Motion to Seal is **GRANTED in part** and **DENIED in part**.

I. BACKGROUND

This action arises from the Nevada State Board of Nursing’s (“Nursing Board’s”) suspension of Plaintiff’s nursing licenses. (See Compl., ECF No. 1-1). On May 13, 2020, the

¹ Plaintiff seeks to seal “all documents in this case” because they all contain protected psychiatric and medical information. (See Mot. Seal, ECF No. 2). The Court agrees that documents concerning Plaintiff’s medical information present good cause to be sealed; however, the Court does not agree that *all* documents in this case concern Plaintiff’s confidential medical information. *Johnson v. Tambe*, No. 19-141-TSZ-MLP, 2019 WL 4014256, at *2 (W.D. Wash. Aug. 26, 2019) (finding the plaintiff’s “privacy interest in his own medical records to be a sufficiently compelling reason to seal the medical records themselves”). Plaintiff does not elaborate on the confidential nature of “all documents” in this case. At minimum, the Court agrees that Plaintiff’s Motion for Preliminary Injunction shall be sealed because it contains a psychiatric evaluation while Plaintiff was an outpatient at Crossroads. (See Mot. Prelim. Inj. at 9–13). Given that the motion contains confidential information, and that Defendant does not oppose the request, the Court accordingly grants in part Plaintiff’s Motion to Seal. See D. Nev. Local R. 7-2(d).

1 Nursing Board received Plaintiff's applications for licensed professional nurse ("RN") and
2 certified registered nurse anesthetist ("CRNA"). (*Id.* 5:12); (*see also* Resp. to Mot. Prelim. Inj.
3:16–18, ECF No. 31). During the Nursing Board's hearing to discuss Plaintiff's application,
4 Plaintiff admitted that his nursing license in California was subject to a probation agreement.
5 (Resp. to Mot. Prelim. Inj. 3:18–22). The Nursing Board ultimately accepted Plaintiff's
6 application but placed him on probation for two years. (*Id.* 3:26–4:2).

7 In April 2021, Plaintiff tested positive on two separate tests, but the Nursing Board did
8 not suspend his license at that time. (Compl. 5:16–19). In August 2021, the Nursing Board
9 received a complaint that Plaintiff administered anesthesia on patients while impaired. (Resp. to
10 Mot. Prelim. Inj. 4:25–27). The Nursing Board investigated the complaint, and ultimately
11 suspended Plaintiff's license on September 10, 2021. (*Id.* 5:10–17). The Nursing Board further
12 set a hearing on the matter for September 23, 2021. (*See* Letter Regarding Summary
13 Suspension, Ex. C to Resp. to Mot. Prelim. Inj., ECF No. 31-4).

14 Though Plaintiff does not explain this in his Complaint, Plaintiff repeatedly requested to
15 continue his hearing. (*See* Stips. Continue Hearing, Ex. H. to Resp. to Mot. Prelim. Inj., ECF
16 No. 31-9). During that time, Plaintiff alleges that he voluntarily checked himself into a drug
17 and alcohol detox facility. (Compl. 5:21–25). Plaintiff alleges that he was further cleared by an
18 addiction medicine physician to return to practice on a conditional basis. (*Id.* 5:25–6:1).

19 During his recovery and before his hearing before the Nursing Board, Plaintiff filed the
20 instant suit, alleging that Defendant violated Title II of the American Disabilities Act ("ADA").
21 (*See generally* Compl., ECF No. 1-1). After Plaintiff filed the underlying suit and instant
22 Motion for Preliminary Injunction, the Nursing Board held a hearing to discuss Plaintiff's
23 suspension. (Resp. to Mot. Prelim. Inj. 8:11–13). At the hearing, Plaintiff accepted all
24 responsibility in the formal accusation, admitted to relapsing, and admitted to continuing to
25 work with an inactive license. (*Id.* 8:15–19). The Nursing Board unanimously voted to revoke

1 Plaintiff's RN and CRNA licenses and to prohibit him from applying for reinstatement for one
2 year. (*Id.* 9:5–8).

3 **II. LEGAL STANDARD**

4 The same legal standard applies to both temporary restraining orders and preliminary
5 injunctions sought pursuant to Federal Rule of Civil Procedure 65. *See Stuhlbarg Int'l Sales*
6 *Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that the analysis
7 applied to temporary restraining orders and preliminary injunctions is "substantially identical").
8 A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear
9 showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def. Council, Inc.*,
10 555 U.S. 7, 24 (2008). A court may grant such relief only upon a petitioner's showing of (1)
11 likelihood of success on the merits, (2) likelihood of irreparable harm in the absence of
12 preliminary relief, (3) the balance of equities weighs in petitioner's favor, and (4) an injunction
13 is in the public interest. *Id.* at 20. A temporary restraining order is distinguished by its
14 "underlying purpose of preserving the status quo and preventing irreparable harm just so long
15 as is necessary to hold a hearing, and no longer." *Granny Goose Foods, Inc. v. Brotherhood of*
16 *Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974); *see also* Fed. R. Civ.
17 P. 65(b) (limiting temporary restraining orders to 14 days unless extended for good cause, and
18 providing for expedited hearings on preliminary injunctions).

19 **III. DISCUSSION**

20 The Court, having considered the Complaint, Plaintiff's Motion, supporting affidavits,
21 and accompanying exhibits, finds that Plaintiff has not met the *Winter* factors—specifically,
22 irreparable harm—and thus, the issuance of a preliminary injunction is inappropriate.

23 At the outset, Plaintiff fails to address irreparable harm in his Motion for Preliminary
24 Injunction. He, instead, generally asserts that he is bankrupt and unable to afford food, health
25 insurance, and rent because of his license suspension. (*See* Mot. Prelim. Inj. at 3). Defendant,

1 in response, argues that monetary harm and loss of employment do not constitute immediate
 2 threats of irreparable harm under *Winter*. (Resp. to Mot. Prelim. Inj. 17:18–18:18). In his
 3 Reply, Plaintiff posits three potential harms that he will suffer as a result of his suspension: (1)
 4 continued financial hardship; (2) loss of business; and (3) delayed ability to attend retraining
 5 programs. (Reply to Mot. Prelim. Inj. 14:21–15:16, ECF No. 34).

6 Plaintiff must establish that he will likely suffer irreparable harm without the issuance of
 7 injunctive relief. *Winter*, 555 U.S. at 21. Plaintiff must “demonstrate a likelihood of irreparable
 8 injury—not just a possibility—in order to obtain preliminary relief.” *Id.* The fact that adequate
 9 compensatory damages will ultimately be available in the ordinary course of litigation weighs
 10 heavily against a claim of “irreparable harm.” *Sampson v. Murray*, 415 U.S. 61, 90, 94 S. Ct.
 11 937, 952, 39 L. Ed. 2d 166 (1974). “[M]onetary harm is usually not enough to constitute
 12 irreparable harm.” *Los Angeles Memorial Coliseum Comm’n v. NFL*, 634 F.2d 1197, 1202 (9th
 13 Cir. 1980). However, a “substantial loss of business and perhaps even bankruptcy” absent a
 14 preliminary injunctive relief shows “irreparable injury.” *Doran v. Salem Inn, Inc.*, 422 U.S.
 15 922, 932, 95 S.Ct. 2561, 2568, 45 L. Ed. 2d 648.

16 As an initial matter, Plaintiff raises new arguments for irreparable harm in his Reply.
 17 (Reply to Mot. Prelim. Inj. 14:21–15:16). “Issues raised for the first time in the reply brief are
 18 waived.” *See Bazuaye v. I.N.S.*, 79 F.3d 118, 120 (9th Cir. 1996). Nevertheless, even if the
 19 Court considered the new arguments raised in the Reply, Plaintiff fails to demonstrate
 20 irreparable harm to meet the *Winter* standard. The majority of Plaintiff’s claims of irreparable
 21 injury concern monetary harm. *Cal. Pharmacists Ass’n v. Maxwell—Jolly*, 563 F.3d 847, 852
 22 (9th Cir. 2009) vacated on other grounds, 565 U.S. 606, 132 S. Ct. 1204, 182 L. Ed. 2d 101
 23 (2012) (“Economic damages are not traditionally considered irreparable because the injury can
 24 later be remedied by a damage award.”); *see also Rent-A-Center, Inc. v. Canyon Television &*
 25 *Appliance Rental, Inc.*, 944 F.2d 597, 603 (9th Cir. 1991) (“It is true that economic injury alone

1 does not support a finding of irreparable harm, because such injury can be remedied by a
 2 damage award.”).

3 Plaintiff’s additional attempts to establish irreparable harm are either too speculative or
 4 not imminent. For example, Plaintiff posits that, as a result of the suspension, that the U.S.
 5 Office of Inspector General (“OIG”) will likely exclude him “from receiving professional
 6 reimbursement from Medicare and Medicaid, now and in the future.” (Reply to Mot. Prelim.
 7 Inj. 14:28–15:2). Plaintiff, however, fails to demonstrate how this possibility is likely and more
 8 than mere speculation. *Winter*, 555 U.S. at 20 (“A plaintiff seeking a preliminary injunction
 9 must establish that [. . .] that he is likely to suffer irreparable harm in the absence of preliminary
 10 relief.”). Plaintiff also argues that he “will lose his customers and not be compensated for
 11 hundreds of hours in unpaid work he spent creating and building this business.” (Reply to Mot.
 12 Prelim. Inj. 15:9–11). “Evidence of threatened loss of prospective customers or goodwill
 13 certainly supports a finding of the possibility of irreparable harm.” *Stuhlbarg Int’l Sales Co.*,
 14 240 F.3d at 841. Plaintiff, however, critically fails to provide any evidence of threatened loss
 15 besides his general assertion that he will “lose his customers” in his outpatient facility. (Reply
 16 to Mot. Prelim. Inj. 15:5–11). Because Plaintiff’s suggested harms do not rise to the level of
 17 immediate, irreparable harm in *Winter*, the Court finds that Plaintiff principally fails to show
 18 the second *Winter* factor. The Court accordingly denies Plaintiff’s Motion for Preliminary
 19 Injunction.²

20 ///

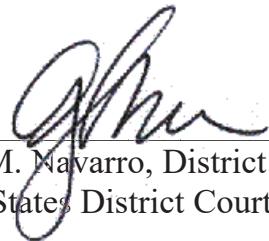
21
 22 ² Given that Plaintiff must establish all four *Winter* factors and cannot demonstrate imminent, irreparable harm,
 23 the Court wholly denies Plaintiff’s request for injunctive relief. *See Winter*, 555 U.S. at 20. The Court, however,
 24 additionally notes that Plaintiff is also unable to demonstrate a favorable balance of equities and lack of public
 25 interest. While Plaintiff may suffer loss of work, the Nursing Board’s interest in ensuring safe healthcare
 systems through the regulation of nurses outweighs Plaintiff’s suspension. In the same vein, the Court also finds
 that there is a significant public interest in protecting the public from the practice of unqualified and unlicensed
 nurses. Notably, Plaintiff argues neither balance of equities nor public interest in his Motion for Preliminary
 Injunction. (*See generally* Mot. Prelim. Inj., ECF No. 4). Because Plaintiff fails to demonstrate irreparable harm,
 balance of equities and public interest, the Court does not further analyze the likelihood of success on the merits.

1 **IV. CONCLUSION**

2 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Preliminary Injunction is
3 **DENIED**.

4 **IT IS FURTHER ORDERED** that Plaintiff's Motion to Seal is **GRANTED in part**
5 and **DENIED in part**. The Clerk of Court shall seal Plaintiff's Motion for Preliminary
6 Injunction, (ECF No. 4). Plaintiff is further ordered to file a redacted version of his Motion for
7 Preliminary Injunction, redacting information pertaining to his psychiatric evaluation.

8 **DATED** this 5 day of July, 2022.



9
10
11 Gloria M. Navarro, District Judge
12 United States District Court
13
14
15
16
17
18
19
20
21
22
23
24
25